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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5079 of 1994
with
SPECIAL CIVIL APPLICATION No 2649 of 2001
with
SPECIAL CIVIL APPLICATION No 10008 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

P J PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5079 of 1994
MR AJ PATEL for Petitioners
GOVERNMENT PLEADER for Respondent No. 1
MR SN SHELAT, Ld. Adv. Gen. with MR JB PARDIWALA for Respondent No. 2
RULE SERVED BY DS for Respondent No. 3

2. Special Civil Application No. 2649 of 2001
MR MIHIR H JOSHI for Petitioners

GOVERNMENT PLEADER for Respondent No. 1
MR SN SHELAT, Ld. Adv. Gen. with MR JB PARDIWALA for Respondent No. 2
RULE SERVED BY DS for Respondent No. 3

3. Special Civil Application No.10008 of 2001
MR ANAND L. SHARMA for Petitioners
GOVERNMENT PLEADER for Respondent No. 1
MR SN SHELAT, Ld. Adv. Gen. with MR JB PARDIWALA for Respondent No. 2
RULE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 06/03/2003

COMMON ORAL JUDGEMENT

1. Upon the note for fixing early date of hearing, with the consent of the parties, the matter is taken up for final hearing.

2. The short facts of the case are that the petitioners were promoted to the post of Assistant Secretaries to the Hon'ble the Chief Justice of this Court from the post of Private Secretaries to the Hon'ble Judges. At the relevant point of time, for the post of Private Secretaries, the pay-scale was Rs.2000-3500. So far as the Assistant Secretaries are concerned, the pay-scale was Rs.2500-4200. The pay-scale of the Private Secretaries to the Hon'ble Judges was thereafter upgraded and they were placed in the pay-scale of Rs.3000-4500. Since the post of Assistant Secretaries to the Hon'ble Chief Justice was higher and rather a promotional avenue from the post of Private Secretaries to the Hon'ble Judges, there should have been a revision in the pay-scale of Assistant Secretaries to the Hon'ble Chief Justice also, but there was no revision and there was only upgradation in the pay-scale of Private Secretaries, as a result thereof, the pay-scale of Private Secretaries remained as Rs.3000-4500, whereas for the post of Assistant Secretaries to the Hon'ble Chief Justice, the pay-scale remained the same as that of Rs.2500-4200. So remain the case for the posts of Additional Secretary and Secretary to the Hon'ble Chief Justice because prior to upgradation of pay-scale of Private Secretaries persons from the post of Assistant Secretaries had the further promotion avenue to the post of Additional Secretaries and Secretary of Hon'ble Chief Justice and even after upgradation, the pay-scale of Additional Secretaries and

Secretary to Hon'ble Chief Justice remained same as was of Rs.2500-100-4500.

3. On account of the aforesaid anomaly, the Hon'ble Chief Justice of the High Court, through Registrar of High Court, as per the communication dated June 29, 1992, recommended to the Secretary to the Government of Gujarat, Legal Department, Gandhinagar, and it was suggested that the pay-scale of Assistant Secretaries should be of Rs.3500-5000 and for the posts of Secretary and Additional Secretaries to the Hon'ble Chief Justice, which is a further promotion avenue from the post of Assistant Secretaries, the pay-scale should be of Rs.4500-5700. It appears that in response to the recommendations by the High Court as per the aforesaid correspondence dated June 29, 1992, the State Government vide communication dated 1st October, 1993 sanctioned the pay-scale of Rs.2500-4200 for the post of Assistant Secretaries and for the posts of Secretary and Additional Secretaries to the Hon'ble Chief Justice, the pay-scale sanctioned was of Rs.4500-5700. It appears that so far as the posts of Secretary and Additional Secretaries to the Hon'ble Chief Justice are concerned, the sanctioned pay-scale was of Rs.4500-5700. However, the stand of the State Government, as reflected from the correspondence dated 1st October, 1993, is that such pay-scale was sanctioned as personal pay-scale and it was further mentioned that the new incumbent shall receive the pay-scale of Rs.2500-4200 only. The petitioners of Special Civil Application No.5079/1994 namely; Shri P.J.Patel and Late Shri T.M.Motwani were appointed as Assistant Secretaries to the Hon'ble Chief Justice, but they were not given the pay-scale of Rs.3500-5000 and were only given the pay-scale of Rs.2500-4200 and, therefore, they preferred this petition before this Court. The petitioners have also produced the correspondence dated 27-10-1993 issued by the Registrar of the High Court to the Secretary, Legal Department, in response to the communication dated 1st October, 1993 calling upon the information for not accepting the proposal made by the High Court as per the communication dated 29th June, 1992. Pending the petition, one of the petitioners i.e. petitioner No.1, Mr.P.J.Patel was appointed as Additional Secretary to the Hon'ble Chief Justice by further promotion from the post of Assistant Secretary. Petitioner No.1, Mr.P.J.Patel retired as the Additional Secretary and Petitioner No.2, Mr.T.M.Motwani retired as Assistant Secretary to the Hon'ble Chief Justice on reaching the age of superannuation and, therefore, the petitioners have, by amendment, in view of further revision of pay-scale of all employees of High

Court also prayed for giving directions to the authorities to give the pay-scales of Rs.12000-16500 and Rs.14300-18300 for the posts of Assistant Secretary and Additional Secretary to the Hon'ble Chief Justice, as the case may be, and also to pay the arrears and consequential benefits including the pension etc. Pending the petition, Mr.T.M.Motwani, who retired as the Assistant Secretary, has expired and his legal heirs are brought on record. Pending the petition being No.SCA No.5079/1994 on 7-7-1994 this Court (Coram: S.M.Soni, J. as his lordship then was), while admitting the petition, passed an ad-interim order directing the State Government to issue necessary orders permitting the petitioners, who were working at that time as Assistant Secretaries to Hon'ble Chief Justice, to draw salary in the pay-scale of Rs.3500-5000 with immediate effect till it finally decides the pay-scale. The aforesaid ad-interim order came to be passed by this Court possibly upon the recommendation by the Registrar of the High Court, as per the correspondence dated June 29, 1992. The aforesaid ad-interim order has been accepted by the State Government and pursuant to which, the pay-scale of Rs.3500-5000 came to be drawn by the petitioners therein.

4. It may be stated that SCA No.2649/2001 came to be filed by the petitioners, who were working as Secretary (petitioner No.1), Additional Secretaries (petitioners No.2 and 3) and Assistant Secretaries (petitioners No.4 and 5), for appropriate writ to direct the respondent State to allow them to draw the pay-scales, which were given to earlier incumbents for the respective posts and also the revised pay-scale of Rs.12000-16500 for the posts of Assistant Secretaries, Rs.14300-18300 for the posts of Secretary and Additional Secretaries. In the said petition, on 1-5-2001 this Court (Coram: M.S.Shah, J.), while admitting the petition, passed the interim order, directing petitioners No.4 and 5 to be placed in the pay-scale of Rs.12000-16500 (pre-revised pay-scale of Rs.3500-5000) and petitioners No.1, 2 and 3 to be placed in the pay-scale of Rs.14300-18300 (pre-revised pay-scale of Rs.4500-5700), both with effect from 1-1-1996 or from the date of their appointment, whichever is later. So far as petitioner No.4, Mr.G.H.Barot is concerned, since he had already retired on 28-2-2001, it was further directed that in addition to the arrears of difference of salary, pension, gratuity and other retiral benefits shall also be computed accordingly. It is pertinent to note that the aforesaid order of the learned Single Judge of this Court was carried by the State Government before the Division Bench of this Court, by preferring LPA No.768/2001 and as per the decision of the Division Bench

of this Court (Coram: M.R.Calla and N.G.Nandi, JJ.) dated 17-8-2001 modified the order of the learned Single Judge only to the extent that the benefits from 1-1-1996 or from their respective date of appointment, whichever is later, shall be arrived at notionally and actual payment shall be made from 1-5-2001 onwards pursuant to the interim order passed by the learned Single Judge. It is further reported that the State Government had carried the matter further before the Apex Court by preferring SLP(Civil) No.20342/2001 and the Apex Court passed the following order on 9-1-2002:

> "We are of the view of the interim salary which is directed to be paid to the respondents is subject to the decision of the writ petition. We are, therefore, not inclined to interfere in the matter. The SLP is accordingly dismissed."

5. So far as Special Civil Application No.10008/2001 is concerned, both the petitioners therein were working, at the relevant point of time, as Assistant Secretaries. It is pertinent to note that during the pendency of SCA No.5079/1994, the Registrar of the High Court, as per the correspondence dated 9th September, 1998 upon the directions issued by the Hon'ble Chief Justice, pointed out the anomalies in the pay-scales of the posts of Secretary, Additional Secretaries and Assistant Secretaries and stated that after the revision of the pay-scales on the basis of the recommendations of the Fifth Central Pay Commission, the pay-scale of the Secretary and the Additional Secretaries to the Hon'ble Chief Justice is Rs.8500-14000, with the clarification that for the present incumbent the only pay-scale is Rs.14300-18300 and for Assistant Secretaries to the Hon'ble Chief Justice, the pay-scale is Rs.8500-272-14000. It was recommended that regular pay-scale of Rs.4500-5700 might be sanctioned to the posts of Secretary and Additional Secretaries and a regular pay-scale of Rs.3500-5000 might be sanctioned for the post of Assistant Secretaries. It was also mentioned in the said communication that the interim order dated 7-7-1994, passed by the High Court in SCA No.5079/1994 allowing the petitioners therein to draw the salary in the pay-scale of Rs.3500-5000 is accepted by the State Government as per the letter dated September 5, 1994 vide Ref. No.SCA-1994-119 and, therefore, equivalent pay scale of Rs.3500-5000 as per the revised pay-scale, is Rs.12000-375-16500. It was also suggested that there should be a regular pay-scale for the posts of Secretary, Additional Secretaries and Assistant Secretaries to the

Hon'ble Chief Justice and, therefore, the regular pay-scales should be sanctioned and the anomaly should be removed. It appears that the matter remained as it is and, therefore, the petitioners of SCA No.10008/2001 preferred the petition for directing the respondent State to give the pay-scale to the petitioners on the post of Assistant Secretaries at par with the earlier incumbents of the post and also revised pay-scale of Rs.12000-16500 with all consequential benefits. In the meantime, on 2-11-2002 in SCA No.10008/2001 this Court (Coram: C.K.Buch, J.), in view of the order passed in SCA No.2649/2001 and in LPA No.768/2001 passed the interim order directing the respondents to place the petitioners therein in the pay-scale of Rs.12000-16500 on the same terms and conditions as laid down in the order dated 17-8-2001 in LPA No.768/2001.

6. On behalf of the respondent State Government, affidavit-in-reply is filed in SCA No.5079/1994, which is to be treated as common stand of the respondent State Government in all this group of petitions, as per the statement made by the learned AGP. The contention raised in the affidavit-in-reply is that so far as the revision of pay-scale is concerned, it is for the expert body to decide and it was further submitted that the posts of Assistant Secretaries to the Hon'ble Chief Justice and even Secretary and Additional Secretaries to the Hon'ble Chief Justice are not the promotional posts and it was submitted that the posts of Assistant Secretaries can be filled up either by selection or by nomination and not by promotion and, therefore, it has been submitted that the contentions of the petitioners are misconceived. It has also been contended on behalf of the State Government that the post has been upgraded in the pay-scale of Rs.2500-4200 on the basis of the strength and length of service and norms and there remained no reason to give upward revision in the pay-scale of Rs.3500-5000. The State Government have also relied upon the judgement of the Apex Court in the case of "Secretary, Finance Department and others vs. West Bengal Registration Service Association and others", reported in AIR 1992 SC, 1203 to contend that it is a policy matter and the revision of pay-scale is required to be examined by expert body. However, it is also submitted that the pay-scale of Rs.4500-5700 has been sanctioned to the posts of Secretary and Additional Secretaries to the Hon'ble Chief Justice as "personal pay-scale" as per the sanction letter and regular pay-scale to the incoming incumbents has been decided in the pay-scale of Rs.2500-4200 as per the decision making process concluded at the relevant point of time. It has also been

submitted that there is neither parity or claim on both the occasions, nor the claim is based on any legally established rights and, therefore, the petitions deserve to be dismissed.

7. In view of the above, it appears that normally the revision of pay-scale is for the expert body to decide and the body which is assigned with the work for examining all the relevant aspects can opine or send recommendation. In the case of "Secretary, Finance Department and Ors. vs. West Bengal Registration Service Association and Ors. ", reported in 1992(2) Judgement Today, 27, the High Court, while exercising writ jurisdiction, had equated the post of the Sub-Registrar with the Judicial Officer and, therefore, the Apex Court, while considering the matter, observed that it is well-settled that equation of posts and determination of pay-scales is the primary function of the executive and not of the judiciary and, therefore, ordinarily courts will not enter upon the task of job evaluation which is generally left to expert bodies like the Pay Commission, etc. But in the very judgement the Apex Court has further observed as under:

> "But that is not to say that the Court has no jurisdiction and the aggrieved employees have no remedy if they are unjustly treated by arbitrary state action or inaction(emphasis supplied). Courts must, however, realize that job evaluation is both a difficult and time consuming task which even expert bodies having the assistance of staff with requisite expertise have found difficult to undertake sometimes on account of want of relevant data and scales for evaluating performances of different groups of employees. This would call for a constant study of the external comparisons and internal relativities on account of the changing nature of job requirements. The factors which may have to be kept in view for job evaluation may include (i) the work programme of his department (ii) the nature of contribution expected of him (iii) the extent of his responsibility and accountability in the discharge of his diverse duties and functions (iv) the extent and nature of freedoms/limitations available or imposed on him in the discharges of his duties (v) the extent of powers vested in him (vi) the extent of his dependence on superiors for the exercise of his powers (vii) the need to co-ordinate with other departments, etc."

The Apex Court has further observed at para 12 as under:

"We have also referred to the history of the service and the effort of various bodies to reduce the total number of pay-scales to a reasonable number. Such reduction in the number of pay-scales has to be achieved by resorting to broadbanding of posts by placing different posts having comparable job-charts in a common scale. Substantial reduction in the number of pay-scales must inevitably lead to clubbing of posts and grades which were earlier different and unequal. While doing so care must be taken to ensure that such rationalisation of the pay structure does not throw up anomalies(emphasis supplied). Ordinarily a pay structure is evolved keeping in mind several factors, e.g., (i) method of recruitment, (ii) level at which recruitment is made, (iii) the hierarchy of service in a given cadre, (iv) minimum educational/technical qualification required, (v) avenues of promotion, (vi) the nature of duties and responsibilities, (vii) the horizontal and verticle relativities with similar jobs, (viii) public dealings, (ix) satisfaction level, (x) employer's capacity to pay, etc. We have referred to these matters in some detail only to emphasise that several factors have to be kept in view while evolving a pay structure and the horizontal and verticle relativities have to be carefully balanced keeping in mind the hierarchial arrangements, avenues for promotion, etc. Such a carefully evolved pay structure ought not to be ordinarily disturbed as it may upset the balance and cause avoidable ripples in other cadres as well."

It is pertinent to note that the Apex Court has further observed as under:

"There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice."(emphasis supplied.

8. In the case before the Apex Court, the High Court

of Calcutta, under Article 226 of the Constitution of India, had issued a mandamus to award the Sub-Registrars, the pay-scale No.17 of Rs.660-1600 with all other privileges admissible to State service officers and, therefore, the Apex Court observed that when all aspects were examined by the expert bodies namely; executives, the High Court, while exercising its power under Article 226 of the Constitution of India, ought not to have issued the mandamus.

9. In view of the aforesaid decision of the Apex Court, even if the contention of the State is to be accepted, the consequential effect would be that for equation of pay-scale and for cadre, the expert bodies or the executives, who have undertaken the exercise would better be in a position to opine for it and normally the opinion of the expert bodies, which have recommended for the pay-scale should be accepted.

10. The aforesaid takes me to examine as to who can be said to be expert body in the present case; whether State Government or Chief Justice of the High Court on administrative side or his authorised officer? So far as the staff of the High Court is concerned, as per Article 229 of the Constitution of India, the same shall vest to the Hon'ble Chief Justice of the High Court or such other Hon'ble Judges or the Officer of the Court, as may be directed by the Hon'ble Chief Justice. Proviso to Article 229(2) provides that subject to the provisions of any law made by the Legislature of the State, the conditions of service of the officers and servants of a High Court shall be such as may be prescribed by the rules made by the Chief Justice of the Court or by some other Judges or Officer of the Court authorized by the Chief Justice to make rules for the purpose. Proviso to Sub-Article (2) of Article 229 of the Constitution of India, provides that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State. In other words, as per the scheme of the Constitution, so far as the officers and servants of a High Court are concerned, it is completely left under the control of the Hon'ble Chief Justice or the other Hon'ble Judges as may be directed by the Hon'ble Chief Justice. Even the legislative function for the purpose of framing of the rules is also vested with the Hon'ble Chief Justice for the purpose of regulating the conditions of the service of the officers and servants of the High Court. It is only in the case of salaries, allowances, leave and pensions, the approval of the Governor of the State is required. Therefore, in my view, as per the

scheme of Article 229 of the Constitution of India, the executive as well as legislative power for the purpose of regulating terms and conditions of the service of the officers and servants of the High Court are within the power of Hon'ble Chief Justice and only in the case of rules pertaining to salaries, allowances, leave and pensions approval of the Governor of the State would be required. Considering the same, it can be said that the expert body recognized by the Constitution for the purpose of regulating the conditions of the service of the officers and servants of a High Court would be the Hon'ble Chief Justice of the High Court or the other Hon'ble Judges or Officer as may be directed by the Hon'ble Chief Justice and as observed above, the executive as well as the legislative power for the power of regulating the conditions of service shall also be vested with the Hon'ble Chief Justice of the High Court and it is only when it involves the matter pertaining to salaries or allowances or leave or pensions approval of the Governor of the State would be required.

11. At this stage, it would be pertinent to note certain observations of the Apex Court in the case of "State of Maharashtra vs. Association of the Court Stenos, P.A., P.S. and Another", reported in 2002(2) SCC, 141. The Apex Court, while considering the matter for the pay-scale of the Bombay High Court Stenographers, Personal Assistants and Personal Secretaries to have parity with the Senior Personal Assistants to Chief Secretary and Additional Chief Secretary of Maharashtra State, at para 5 has observed as under:

> "Under the Constitution of India, appointment of officers and servants of a High Court is required to be made by the Chief Justice of the High Court or such other Judge or Officer of the Court as the Hon'ble Chief Justice directs. The conditions of service of such officers and servants of the High Court could be governed by a set of rules made by the Chief Justice of the High Court and even the salaries, allowances, leave or pension of such officers could be determined by a set of rules to be framed by the Chief Justice, but so far as it relates the salary and allowances etc., it requires approval of the Governor of the State."

12. On a plain reading of Article 229(2) of the Constitution of India it is apparent that the Hon'ble Chief Justice is the sole authority for fixing the salaries etc., of the employees of a High Court, subject

to the rules made under the said Article. Needless to mention, that rules made by Hon'ble Chief Justice will be subject to the provisions of any law made by legislature of the State. In view of the proviso of Sub-Article (2) of 229, rule relating to salaries, allowances, leave or pensions of the employees of a High Court would require approval of the Governor before the same can be enforced. The approval of the Governor, therefore, is a condition precedent to the validity of the rules made by the Hon'ble Chief Justice and the so-called approval of the Governor is not in his discretion, but as advised by the Government. It would, therefore, be logical to hold that apart from any power conferred by the rules framed under Article 229, the Government cannot fix the salary or authorise any particular pay scale of an employee of a High Court. Earlier also the view was the same, but incidently the question had arisen before the Apex Court again as to whether it is within the power of the Hon'ble Chief Justice or the other Judges of the High Court or not. In the case of "High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal and another", reported in AIR 1998 SC, 1079, the Apex Court at para 31 has observed as under:

> "The rules made under Article 229 of the Constitution have, thus, specified the posts on which officers of the Rajasthan Higher Judicial Service or Rajasthan Judicial Service are to be appointed. The method of recruitment has also been indicated. All appointments on these posts are to be made by the Chief Justice. These rules can be altered, amended or rescinded only by the Chief Justice who alone has the rule-making power."(emphasis supplied)

13. The Court further observed that the language used in Article 229 of the Constitution is by using the words "Chief Justice and not the High Court" and, therefore, the power vests solely with the Chief Justice for the purpose of exercising power under Article 229 of the Constitution of India.

14. Therefore, the only conclusion inevitable is that the powers as per Article 229 of the Constitution of India vest in the Hon'ble Chief Justice for regulating the terms and conditions of the staff of the High Court and it is only in the matter where it involves the financial aspects, like the payment of salaries, leave, pension etc., the approval of the Governor would be required.

15. Keeping the aforesaid legal position in mind if the matter is examined accordingly, it appears that after the upgradation of the post of private secretaries to the Hon'ble Judges in the year 1991, the matter was examined by the then Hon'ble Chief Justice of the High Court and the said aspect is apparent from the communication dated June 29, 1992. It is necessary to take note that the learned Advocate General Mr.Shelat appearing with Mr.Pardiwala on behalf of the High Court administration has made statement at the bar that the communication dated 29th June, 1992 as well as communication dated September 9, 1998, both addressed to the Secretary to the Government of Gujarat, Legal Department are, in terms, in exercise of the power under Article 229 of the Constitution of India. The learned Advocate General appearing on behalf of the High Court administration submitted that it was found by the then Hon'ble Chief Justice in the year 1992 that having considered the past practice of payment of the pay-scale to the Assistant Secretaries to the Hon'ble Chief Justice above the pay-scale of private secretaries to the Hon'ble Judges, it is necessary to provide the pay-scale of Rs.3500-5000 to the post of Assistant Secretaries to the Hon'ble Chief Justice, keeping in view that the private secretaries to the Hon'ble Judges, are after upgradation, placed in the pay-scale of Rs.3000-4500. It further appears from the communication dated June 29, 1992 that the then Hon'ble Chief Justice also found that the posts of Secretary and Additional Secretaries to the Hon'ble Chief Justice as per the cadre and the scale was in the higher pay-scale than that of the Assistant Secretaries to the Hon'ble Chief Justice and, therefore, it is necessary that the Secretary and the Additional Secretaries to the Hon'ble Chief Justice should be placed in the higher pay-scale of Rs.4500-5700. In my view, as such it was required for the Government to consider the matter for amendment of the relevant rules for the cadre as well as for the pay-scale. However, the communication dated 1-8-1993 shows that the State Government treated that executive sanction is required and, therefore, the matter was placed upto the level of Hon'ble Chief Minister and the sanction came to be granted for the pay-scale of Secretary and the Additional Secretaries to the Hon'ble Chief Justice for Rs.4500-5700. However, the language used in the sanction order is "personal pay-scale". In my view, the contention of the State Government is that it is only the personal pay-scale of Secretary and Additional Secretaries, is sanctioned by the Government and, therefore, it would continue only to the extent of holding of the post by the incumbent concerned at that time and it is not a pay-scale sanctioned for the regular

post of Secretary and Additional Secretaries, is wholly ill-founded. In the Government, there can hardly be any question of sanctioning of personal pay-scale. If any pay-scale is sanctioned for any post, it has got to be reasonably read that such will be the pay-scale sanctioned for the post concerned and it can never be treated as "personal pay-scale". Therefore, I find that there is absolutely no substance in the contention raised on behalf of the State Government that the pay-scale sanctioned as that of Rs.4500-5700 was a personal pay-scale to the incumbent person concerned holding the post of Secretary and the Additional Secretaries at that time only. The learned AGP has also made an attempt to contend that since in the later portion of the sanction order dated 1st October, 1993 it has been clearly mentioned that the new entrant/officer or new incumbent shall receive the pay-scale of Rs.2500-4200, the sanctioning of pay-scale of Rs.4500-5700 should be treated as "personal pay-scale" of the incumbent holding the post at the relevant point of time only. In my view, it hardly lies in the mouth of the State, which is supposed to act as an ideal employer, to contend that the new entrants will not get the pay-scale which is sanctioned of Rs.4500-5700, but will get the pay-scale of Rs.2500-4200. There is no dispute on the point that the post or nature of duties or responsibilities of Secretary of Additional Secretaries to the Hon'ble Chief Justice is, in any manner, altered or is likely to be altered. If the post is same, nature of duties and responsibilities is also same, and the work is also same, if the person, who is to be appointed, is also on the post of Secretary or the Additional Secretaries, as the case may be, and if the pay-scale will be offered as that of Rs.2500-4200 then in that case, in my view, it would strike at the principles of not only equal pay for equal work, but it would be also violative of Article 14 and 16 of the Constitution of India on the face of it. If there is any change in the status, nature of work, duties, or otherwise, the matter may be different. If the post is created with the pay-scale of Rs.4500-5700, there is hardly any justifiable ground for the State to put an embargo that the new entrant will receive the pay-scale of Rs.2500-4200, more particularly when no extraordinary or special circumstances are brought to notice of the Court. Therefore, in my view, the nomenclature given to the sanctioned pay-scale of Rs.4500-5700 to the post of Secretaries and the Additional Secretaries as that of personal pay-scale is nothing but a camouflage and the condition put in the order that new entrant or new incumbent shall receive the pay-scale of Rs.2500-4200 is also violative of Articles 14 and 16 of the Constitution

of India.

16. As such it was obligatory on the part of the State to amend the rules for the pay-scale and for the cadre for the post of Assistant Secretary and also for the post of Secretary and Additional Secretaries to the Hon'ble Chief Justice in light of the communication dated 29th June, 1992 and instead of doing so, as observed earlier, the State Government has treated that the sanction required is from the executive power of the State Government and, therefore, it has passed the order dated 1st October, 1993. In my view, it was expected from the State to come out with appropriate amendment in the rules governing the conditions of service of the officers and servants of the High Court and to make amendment and thereafter to place for approval of the Governor as per the proviso of Article 229(2) of the Constitution of India. Since the said action is not taken by the Government, it has resulted into this litigation.

17. Even if the matter is examined for the purpose of considering the condition of creation of the anomalies on account of the upgradation of the post of Private Secretaries to the Hon'ble Judges and non-upgradation of the pay-scale of the Secretary, Additional Secretaries and Assistant Secretaries to the Hon'ble Chief Justice, in my view, even otherwise also there is a considerable force in the contention raised by the learned Counsel appearing for the petitioners. There is no dispute on the point that prior to communication of 1992, the pay-scale of Private Secretaries to the Hon'ble Judges was of Rs.2000-3000, whereas the pay-scale of the Assistant Secretaries to the Hon'ble Chief Justice was of Rs.2500-4200 and the pay-scale of Secretary and Additional Secretaries was also of Rs.2500-4500. It appears that an employee from the cadre of Assistant Secretary to the Hon'ble Chief Justice is given higher designation of Secretary and Additional Secretary to the Hon'ble Chief Justice on the basis of their seniority-cum-merit. There is also no dispute on the point that when the pay-scales were revised, for the post of Secretary and Additional Secretaries to the Hon'ble Chief Justice, after the communication dated 29th June, 1992, the pay-scale sanctioned was of Rs.4500-5700. The State Government, in view of the communication dated 29th June, 1992, ought to have considered the matter for revision of the pay-scale of Assistant Secretaries to the Hon'ble Chief Justice by putting them in the pay-scale of Rs.3500-5000 by suitably amending the relevant rules for the purpose and placing the matter for approval before

the Governor in view of the provisions of Article 229(2) of the Constitution of India. But from the communication dated 29-6-1992, it appears that the anomaly was there in the pay-scales of Assistant Secretaries, Additional Secretaries and Secretary to the Hon'ble Chief Justice vis-a-vis the pay-scale of Private Secretaries to the Hon'ble Judges after the upgradation, because prior to the upgradation, the post of Assistant Secretaries was already in the higher pay-scale than that of Private Secretaries to the Hon'ble Judges. When for the post of Private Secretaries to the Hon'ble Judges the upgradation was there by placing them in the higher pay-scale, from Rs.2000-3000 to Rs.3000-4500, the Assistant Secretaries, Additional Secretaries and the Secretary to the Hon'ble Chief Justice were naturally required to be placed on the higher pay-scale. As observed earlier, the matter was examined by the then Hon'ble Chief Justice and it was also found that keeping some gap between the pay-scale of Assistant Secretaries to the Hon'ble Chief Justice and Secretary and Additional Secretaries to the Hon'ble Chief Justice, the Assistant Secretaries should be placed in the pay-scale of Rs.3500-5000 and the Secretaries and Additional Secretaries to the Hon'ble Chief Justice should be placed in the pay-scale of Rs.4500-5700 and, therefore, the communication was addressed and it was also mentioned in the said letter to accordingly revise the pay-scale. Therefore, it appears that on account of the upgradation of the pay-scale of the Private Secretaries to the Hon'ble Judges and on account of non-upgradation of pay-scale of Assistant Secretaries, Additional Secretaries and Secretary to the Hon'ble Chief Justice, the anomaly was created, which was required to be resolved. In my view, even the expert body or the authority namely; the Hon'ble Chief Justice, vested with the power under Article 229 of the Constitution of India, had also examined the matter and had found that there is anomaly, which is required to be resolved by providing the pay-scale for the post of Assistant Secretaries of Rs.3500-5000 and for the post of Secretary and Additional Secretary of Rs.4500-5700. Therefore, I am of the view that the error had crept in, while upgrading the pay-scale of the Private Secretaries of the Hon'ble Judges, of not upgrading the pay-scale of the Assistant Secretaries, Additional Secretaries and Secretary to the Hon'ble Chief Justice.

18. In view of the aforesaid scenario and facts and circumstances of the case and after examining the provisions of the Constitution and the case law on the subject, in my view, when the learned Advocate General appearing for the High Court administration has made the

statement at the bar that the communication dated 29-6-1992 and the communication dated 9th September, 1998 copy whereof is produced in the compilation of SCA No.2649/2001 at Annexure "A" and Annexure "B" respectively are in exercise of the power under Article 229(2) of the Constitution of India by the then Hon'ble Chief Justices and when the State Government has not treated the communication and the requisition made by the Hon'ble Chief Justice in exercise of power under Article 229 of the Constitution, it would be in the fitness of the things to give suitable direction instead of considering the matter for granting reliefs as prayed by the concerned petitioners in the petition. I am of the view that when the matter can well be considered by the State Government in light of both the communications made by the High Court in exercise of the power under Article 229 by the then Hon'ble Chief Justice, it would be just and proper to give appropriate directions to the State Government for resolving the dispute for all time to come and in my view, giving of such directions would rather be in the general interests of the administration of the High Court as well as for maintaining the provisions of Constitution of India. At the same time, when the interim orders pending the petitions have continued throughout and the interim orders which were granted in these petitions were also examined by the Division Bench and were further not disturbed by the Apex Court in SLP, if the interim orders are allowed to continue for some more time, no serious prejudice will cause to anyone, more particularly in view of aofresaid observation, discussions and findings.

19. At this stage, it would be worthwhile to consider the view expressed by the Apex Court in the case of "Supreme Court Employees Welfare Association v. Union of India", reported in AIR 1990 SC, 334, while considering the question of pay-scale and the dearness allowance, the Apex Court had found that the rules are required to be amended as recommended by the Hon'ble Chief Justice of India and they are required to be placed for approval before the President of India and to be implemented thereafter. At para 76 and 77, the Apex Court observed as under:

"76. In the circumstances, as agreed to by the Chief Justice In the circumstances, as agreed to by the Chief Justice of India he may, after considering the recommendations of the Fourth Pay Commission and other materials that would be available to him and the representations of the employees of the Supreme Court and other matters,

as stated hereinbefore, frame rules by making necessary amendments to the existing rules relating to salaries and allowances of the Supreme Court employees and forward the same to the President of India for his approval.

77. The parties are directed to maintain status quo as regards the scales of pay, allowances and interim relief, as on this day, till the framing of the rules by the Chief Justice of India and the consideration by the President of India as to the grant of approval of such rules relating to salaries, allowances, leave or pensions, and the interim orders passed by this Court will also continue till such consideration by the President of India. All the Writ Petitions and the Civil Miscellaneous Petitions are disposed of as above. There will, however, be no order as to costs in any of them."

20. Therefore, as observed above, when a stand is made clear on behalf of the High Court administration that earlier recommendation and the communication referred to hereinabove were in exercise of power under Article 229 of the Constitution of India, it would be expected from the State to consider the matter accordingly. If the State finds that the rules are required to be amended for such purpose, then accordingly the action could have been taken. It is also, at the same time, true that there is no express proposal by the Registrar of the High Court to seek approval for amendment of the rules or to place the rules for approval of the Governor of the State. At this stage it is worthwhile to take note that in case of "High Court of Gujarat vs. K.K.Parmar and Others", reported at 1999(3) GLR, 2378, the question came up for consideration before Division Bench of this Court regarding the proceedure to be followed by the Hon'ble Chief Justice to modify or to vary a rule. The Division Bench of this Court at para 15 has observed as under:

"It was not necessary for the Chief Justice to mention source of power which was exercised. Moreover, Article 229(2) of the Constitution, nowhere prescribes or indicates any particular form in which rules should be framed, nor does it precribe any formality required to be gone into. The decision to extend zone of consideration was not only in larger interest of the institution, but was also in the interest of all eligible candidates. The said decision was made known to

the concerned employees when it was informed on notice board that all eligible candidates would be considered. Hence, even though the decision is not express in the form or in the words in which the rule is framed or an order is issued, it would amount to rule framed in exercise of power conferred by Article 229(2) of the Constitution."

21. Having considered the above, I am of the view that the following directions shall meet with the ends of justice:

21.1) The State Government shall consider the matter keeping in view the observations made by this Court in the above judgement and shall also take into consideration that the communication addressed by respondent No.2 namely; the Registrar of the High Court dated 29-6-1992 and dated 9-9-1998 which are in exercise of power by the then Hon'ble Chief Justice under Article 229 of the Constitution of India.

21.2) If the State Government finds that it is possible to amend the relevant rules on the basis of aforesaid two communications and decisions and to place it for the approval of the Governor of the State, the State Government shall take action accordingly and if any formal proposal is required from the Hon'ble Chief Justice, it would be open to the State Government to approach the Registrar of the High Court for such purpose.

21.3) In view of the aforesaid statement made by the learned Advocate General on behalf of the Registrar of the High Court, when the decision is already taken under Article 229(2) of Constitution of India by the Hon'ble Chief Justice, and if the same is desired by the State Government, the Registrar of the High Court may also forward a formal proposal for amendment of the relevant rules in light of aforesaid both the communications dated 29-6-1992 and dated 9-9-1998 referred to hereinabove.

21.4) The aforesaid exercise shall be completed as early as
six months from the date of receipt of the writ of this Court.

21.5) Until the aforesaid relevant rules are framed for

bringing about amendment and until the final decision is taken in the matter of granting of approval by the Governor of the State and until such rules are brought into force or otherwise the interim relief granted in all the concerned petition earlier shall continue.

22. All these petitions are allowed to the aforesaid extent, in terms of the aforesaid directions. Rule made absolute accordingly in all these petitions. There shall be no order as to costs.

6-3-2003 (Jayant Patel, J.)

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